

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

WALTER N. KOSCH, et al.,)
v.)
Plaintiffs,)
FFIC/BEAM, INCORPORATED, a Philippine)
corporation, et al.,)
Defendants.)
No. 08 C 750
The Honorable
Blanche M. Manning

**JOINT RESPONSE OF DEFENDANTS KARL NEUBACHER AND
TIMOTHY SLIFKIN TO PLAINTIFFS' MOTION FOR VOLUNTARY DISMISSAL**

Now come Defendants Karl Neubacher and Timothy Slifkin, by their undersigned attorneys, and in response to Plaintiff's motion to dismiss this cause of action without prejudice, state as follows:

1. The Plaintiffs filed the voluminous and convoluted complaint in this cause apparently seeking relief because of an alleged breach of contract in connection with a possible loan transaction. However, the complaint never alleged that Defendants Neubacher or Slifkin had entered into or breached a contract with the Plaintiffs.

2. Instead, the complaint alleged absolutely nothing at all as to Defendant Slifkin, other than he was an officer of one of the Defendants. The complaint did allege that Defendant Neubacher was somehow involved in discussions involving the Plaintiffs and a possible transaction and purported to set forth causes of action against him for fraud, violations of RICO and other matters

3. Defendant Slifkin filed a motion to dismiss this case as to him for failing to state a claim on March 6, 2008. This motion was a two page motion that simply pointed out that there were no substantive allegations against Defendant Slifkin, no causes of action were claimed as to him and no relief was sought as to him. In response, the Plaintiffs sought and were granted 28 days to respond to this very simple motion.

4. Defendant Neubacher filed a more lengthy and detailed motion to dismiss for failure to state a claim on March 13, 2008. The essence of this motion was that the well pleaded facts of the complaint did not set forth a cause of action against Defendant Neubacher. Plaintiffs were given at least three weeks to file a response.

5. The Plaintiffs' responses to both motions to dismiss were due on April 8, 2008. However, Plaintiffs filed no response whatsoever to the motions to dismiss at that time. Instead, several days later, Plaintiffs filed a motion to voluntarily dismiss this case without prejudice as to all claims and all defendants. No reason was given for this dismissal other than the Plaintiffs had decided not to pursue this case at this time. No serious attempt was made to refute any of the arguments made by Defendants Slifkin and Neubacher in their motions to dismiss.

6. Defendants Neubacher and Slifkin of course have no objection to the dismissal of this case as to them. That is in fact the relief that they sought in presenting their motions to dismiss. However, we submit that as to Defendants Neubacher and Slifkin, the dismissal should be *with* prejudice given the manifest lack of merit of the complaint as to these Defendants, as demonstrated by a review of the complaint itself, the content of the motions to dismiss and the utter inability of the Plaintiffs to articulate a theory as to the existence of a cause of action against these Defendants. The Plaintiffs have already harassed these Defendants and required them to spend time and money on their defense in a case manifestly without merit as to them and

passed on an opportunity to justify their complaint. The Plaintiffs should not now be permitted to repeat that effort at a time of their own convenience.

WHEREFORE, Defendants Timothy Slifkin and Karl Neubacher respectfully request that the complaint in this cause be dismissed as to them with prejudice.

Dated: May 8, 2008

Respectfully submitted,

KARL NEUBACHER & TIMOTHY SLIFKIN

By: /s/ *Theodore J. Low*
One of their Attorneys

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